

cause to this court with directions to dismiss it, after recalling the funds from the receiver. But this was not done, the direction being to proceed, as the nature of the cause, and the rights and equities of the parties, may require.

The parties to the record before the Court of Appeals, were Moses Potter vs. Edward M. Kerr, and it may be that the court decided the cause upon the ground, that upon that record they could only regard the rights of those parties *inter se*; and there being as between them no partnership, there was no foundation for the orders appealed from.

It must have been manifest to the Court of Appeals, however, that there were creditors of the house to a large amount, for that appeared by the pleadings; and it must have been equally obvious to that tribunal, that Kerr was insolvent, and that claiming the sole ownership of the property, he insisted upon his right to apply the effects to the payment of debts due from him, not connected with or growing out of the business of the house; and this may have been the reason why the bill was not dismissed, or the record remanded to this court, with directions to dismiss it, after the property should be taken out of the hands of the receiver.

The Court of Appeals may have considered, that the creditors not being parties to the cause before that court, the orders passed by this court, which were designed for their protection, could not be supported; but that seeing there were creditors to a large amount, who might become parties at a subsequent stage of the cause, and whose rights would be jeopardized by restoring the property to Kerr, it was deemed right, instead of pronouncing a final judgment, to send the case back to this court for such further proceedings as the interests of the creditors might require, and to give them an opportunity of coming in and being heard.

This view of the subject borrows strength from the disposition which the appellate court made of the subject of costs. They award the appellant the costs incurred by him upon the appeal, and in the Court of Appeals; but leave undecided the question of costs in this court, which it is fair to infer, would